IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION No. 567 OF 2005

Jayesh Navinchandra Shah Petitioner

Vs.

M/s. United Rubber Industries (I) P. Ltd. Respondent

Mr. J. M. Shah for petitioner.

Ms. Uday Shankar Samudrala for respondent.

CORAM : S. C. DHARMADHIKARI, J.

DATE : MARCH 16, 2006.

P.C. :-

. Heard Mr. Shah appearing for the petitioner and Mr. Samudrala, appearing for the respondent. Perused the company petition, annextures thereto and the reply, as well as rejoinder affidavit with their assistance.

2. The petitioner’s case in this winding up petition is that respondent company has taken over the business of United Rubber Industries, which was a partnership firm, registered under the Indian Registration Act, 1932. The petitioner states that the goods worth Rs. 7,33,000 and odd were supplied to this firm and a statement of account was forwarded

enlisting therein the outstanding dues. Further case is that respondent has taken over the business of this partnership firm with all assets and liabilities. It is bound to pay the amount. The statutory notice was sent, but the same remained unattended and unreplied. It is after the proof of receipt of such notice, that the petition has been instituted. it is contended that apart from the claim of the petitioner, the respondent company has failed to meet its liabilities towards other creditors and therefore, not in a sound financial position.

3. An affidavit in reply has been filed, in which liability is denied. It is stated that the supply is to the firm and the statement of account was forwarded to the partnership form. Assuming without admitting that said statement of account was so forwarded, there is no mention in so far as the records of the firm of any liability outstanding to the petitioner. Further, without prejudice, it is contended that statement of account as forwarded, contains several discrepancies and more particularly, those highlighted in paragraph 5(f) and 5(g). No supporting documents are annexed. Further, all

allegations with regard to the financial position being unsound, are denied and it is pointed out that the company employs about 200 persons.

4. The other contention which is raised is that the claim of the petitioner is barred by limitation. In the rejoinder affidavit, it is contended that the firm was supplied goods and it is equally true that the firm's liabilities have been taken over by this respondent. It is too late, therefore, to deny the petitioner's claim. It is contended that the firm has made some part payments and it has not disputed the correctness of statement of account. The reliance is placed upon one of the entries therein to save the bar of limitation. Letter of erstwhile firm dated 31st August, 2004 is also relied upon.

5. In my view, considering the above nature of pleas and more particularly, with regard to the claim being time barred and correctness of the entries of the statement of account which has been verified and scrutinized by the company in the light of the records of the erstwhile firm, the dispute raised on affidavit by the company cannot be said to be lacking in bona fides as it is well settled that company

petition is not a recovery proceeding, such disputes and more particularly raised in the present facts and circumstances cannot be adjudicated upon in company petition. The remedy of the petitioner is elsewhere.

6. The company petition is therefore dismissed. However, it is clarified that the observations made in this order would not prevent the petitioner from initiating appropriate proceedings and or prosecuting them in accordance with law.

(S. C. DHARMADHIKARI,J.)